

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Benecia, California)

APS WEST COAST, INC. d/b/a AMPORTS 1/

Employer

and

MACHINISTS AUTOMOTIVE TRADES, DISTRICT
LODGE 190, LOCAL LODGE 1173 2/

Petitioner

Case 20-RC-17907

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 4/
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the following reasons: 5/

ORDER

IT IS HEREBY ORDERED that the petition(s) filed herein be, and it (they) hereby is (are), dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by November 28, 2003.

Dated November 14, 2003at San Francisco, California/s/ Robert H. Miller
Regional Director, Region 20

- 1/ The name of the Employer is in accord with the record evidence.
- 2/ The name of the Petitioner (herein also referred to as the IAM) is in accord with the amended petition.
- 3/ The record reflects that the Employer is a California corporation, with an office and place of business at Benicia, California, where it does business under the name Amports. At the Benicia facility, the Employer processes vehicles for import and export. The parties stipulated, and I find, that during calendar year 2002, the Employer purchased and received at its Benicia, California, facility, goods valued in excess of \$50,000 directly from points outside the State of California. Based on the record evidence and the parties' stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this matter.
- 4/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 5/ By its amended petition, the Petitioner seeks to sever from an existing contractual unit, a unit comprised of all journeymen (body, fender, automotive and paint technicians), installers and body shop helpers employed at the Employer's Benicia, California facility; excluding all other employees, guards and supervisors as defined by the Act. The petitioned-for unit consists of about ten employees, including three journeymen automotive technicians, five journeymen body, fender and paint technicians, one body shop helper and one installer.

The Employer contends that in order to be an appropriate unit, the petitioned-for unit must include all employees covered under its most recent collective-bargaining agreement with the Petitioner and Teamsters Automotive Employees' Union, Local No. 78, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein referred to as the Teamsters Union and the IBT). There are about sixty employees in the unit that the Employer contends is appropriate.

The record reflects that for the past thirty-one years, since 1972, the classifications of employees in the petitioned-for unit have been part of the unit covered under a series of collective-bargaining agreements between the Employer and its predecessors, and the Petitioner and the Teamsters, and the predecessors of these two unions.

The most recent collective-bargaining agreement between the parties, herein called the Agreement, was effective from October 1, 2000, through September 30, 2003. Under the Agreement, the Teamsters Union and the Petitioner were recognized jointly as "the Union." The classifications covered under the Agreement include classifications identified "IAM Classifications," journeymen (body, fender and paint technicians and automotive

technicians), body shop helpers, and installers; and classifications identified as "IBT Classifications," general pool/trainees, utility employees, underseal/ziebart applicators, locators, account leads, lead persons, parts persons, utility parts persons and maintenance employees. (Herein, the Petitioner will also be referred to as the IAM and the Teamsters Union will also be referred to as the IBT.) At the time of the hearing, the IBT classifications consisted of approximately 52 employees, including approximately 28 general pool workers, 21 to 22 utility workers, two locators, two lead persons, and two parts workers.

The record reflects that since August 2003, the Petitioner and the Teamsters Union have been bargaining separately with the Employer over the terms of a successor collective-bargaining agreement. However, to date, the Employer has declined to enter into separate collective-bargaining agreements with the two unions. No petition has been filed by the Teamsters Union to represent the IBT classifications covered under the Agreement. Nor did the Teamsters Union intervene in or appear at the hearing. In this regard, the record reflects that the order rescheduling the hearing to October 15, 2003, was served on the Teamsters Union. Thus, the Teamsters Union had actual notice of the hearing herein. At the hearing, Petitioner Area Representative Vern Dutton, testified that Teamsters Union Business Representative Ron Paredes came to the door of the hearing room and gave Dutton a letter that the Petitioner placed into evidence. This letter, which is dated October 15, 2003, states that the Teamsters Union does not seek to represent employees in the IAM classifications of the Employer at Benicia or to be jointly certified in a collective-bargaining agreement. Dutton authenticated the signature on the letter as that of Paredes.

Other Unions Representing Employees At the Employer's Facility. The record shows that the Employer, through its ownership of a separate company, called Benicia Port Terminal Company, has collective-bargaining agreements with two other unions, referred to in the record as the Pile Drivers Union and the Operating Engineers. The record shows that these unions are involved in the building, repair and maintenance of piers and structures at the Employer's facility.

Background. The Employer has been involved in the business of port processing since 1972. Port processing involves the receipt, storage, warehousing, repair and modification of vehicles for import and export. Vehicles arrive at the Employer's Benicia facility by ship, train and truck. The Employer repairs, adds accessories, and/or modifies the vehicles to comply with the applicable requirements for their intended markets. The Employer's facility consists of approximately six hundred acres, with buildings at several different addresses. The IAM and IBT employees work at two of those locations: Compound 2 at 2050 Park Road and Compound 4 at 2650 Harbor Way. IAM and IBT employees work at both of these compounds and those employees who are in the same classification perform the same type of work at each compound but on different makes of vehicles for different customers. Compound 2 is the larger and busier of the two compounds.

Management & Supervision. General Manager James Triplett heads the Benicia facility. Reporting to Triplett is Operations Manager Randy Scott who is responsible for overall auto operations at all facilities. Reporting to Scott is Facility Manager Ron Chamberlain, who is responsible for operations at Compound 2, and Facility Supervisor Les Phillips, who is responsible for operations at Compound 4. Employees (both IAM and IBT) at Compound 2 report directly to Chamberlain and employees at Compound 4 (both IAM and IBT) report directly to Phillips. The Employer has no formal departmental structure and there is no evidence that the IBT and IAM employees at either compound have any separate immediate supervisors other than Chamberlain and Phillips.

The Employer's Operation at Compound 2. At Compound 2, the Employer performs port-processing operations for Glovis, the global supplier for Hyundai Manufacturing, which owns Kia and Hyundai Motors. Approximately 50 to 60 persons work at Compound 2, including those in IAM classifications (i.e., two journeymen automotive technicians; four journeymen body, fender and paint technicians; one installer; and one body shop helper); and those in IBT classifications (i.e., 12 to 14 general pool workers/trainees; 21-22 utility employees; two locators; two lead persons and two parts employees).

Compound 2 consists of three separate buildings, including a main processing center, a mechanics' shop and a car wash. The main processing center is a 44,000 square foot warehouse, one-half of which is used to process cars through a conveyor system. At the time of the hearing, due to the low volume of vehicles, the conveyor system was not being utilized. The other half of the processing center is divided into an area where seven or eight utility employees represented by the IBT install accessories on cars, including spoilers, roof racks and body moldings. The utility employees are not required to be journeymen or to have trained or completed an apprenticeship program, like the IAM journeymen. The utility employees regularly use screwdrivers, drills, and wrenches in performing their job. The Employer does not provide them with uniforms.

Also working in the same area as the IBT utility employees is one IAM installer, whose job is to install air conditioning units in cars. Although the installer was working in a separate building where the IAM journeymen automotive technicians work at the time of the hearing because he needed to use a lift, most of the time, he works side-by-side with the utility employees who are installing accessories on cars in the main processing building. The installer is required to possess some technical proficiency but is not required to have the level of training of the IAM journeymen automotive technicians. He provides his own tools, which include air tools, an air ratchet, an impact gun, a socket set, wrenches and screwdrivers. The Employer does not provide him with a uniform.

Within thirty feet of the conveyor line, in a walled-off area of the processing center, is the body shop, where the four journeymen body, fender and paint technicians work. All of these employees have completed the apprenticeship and/or training programs required to be considered journeymen. In this regard, the record shows that one of the journeymen body, fender and paint technicians at Compound 2, Douglas Newton, graduated from a four-year apprenticeship program in January 2000 and has an ASE Masters Certificate in painting and auto body collision repair. Newton also attended a paint school that the Employer sent him to in order to train him about the specific paint system being used by the Employer. Newton provides his own tools, including sanders and spray guns, which are worth about \$2,000. Each of the other journeymen body, fender and paint technicians also supplies his or her own set of hand tools, which Newton estimated to be worth about twenty thousand dollars a set. Newton's job during the three years he has been employed by the Employer has been to paint spoilers, which are attached on the back ends of cars for decorative purposes. Newton sands, paints and bakes the spoilers ten at a time and had painted about 11,000 of them since starting work for the Employer. According to Newton, about three or four times a year, when his workload is heavy, an IBT employee assists him with sanding the spoilers. The spoilers are delivered to Newton by an IBT employee. Both Newton and an IBT employee are responsible for stocking the spoilers in the warehouse. The major portion of the work of the journeymen body, fender, and paint technicians is to repair damage to vehicles sustained during transit. It appears from the record that such damage is generally minor and similar in nature. The Employer supplies uniforms to the IAM journeymen body, fender and paint technicians.

The IAM body shop helper generally works just outside the enclosed body shop in the same area of the processing center where the IBT utility workers install accessories on cars. The body shop helper's job is to polish out minor imperfections in cars. Due to the high volume of this work, the body shop helper spends almost all of his time performing polishing work. While he is required to have some technical ability, the body shop helper is not required to have completed or to be in an apprenticeship program. Nor is he required to have the level of training and skill of a journeyman. He is supplied with a uniform by the Employer.

The parts area is also located in the main processing building. Two IBT parts employees work in the parts area. One of these employees acts as a service writer and writes up parts orders for the technicians and the other is a parts employee.

About fifteen feet away from the main processing center, across a drive aisle, is a separate building of about 18,800 square feet where the journeymen automotive technicians work. The two technicians, Dan Nelson and Mike Venegas, have both worked for the Employer for about three years and have completed the necessary apprenticeship and training programs to be deemed journeymen technicians. Nelson is an ASE Certified Master

Technician with a smog license and with an L-1 certification for advanced emissions. He apprenticed in the automotive shop for one year and has been an automotive technician for thirteen years. Nelson provides his own tools, which are worth about \$10,000. Venegas was previously an IAM installer for the Employer. The journeymen automotive technicians spend about 70% of their time working inside the shop. The other portion of their work time is spent performing work in the parking lots.

About sixty-five percent of the journeyman automotive technicians' work involves port upgrade procedures (called PUP's), which are required by the manufacturer before cars are sold, and which involve replacing or reprogramming the same part or parts on hundreds of cars at a time. PUP's are handled according to detailed instructions from the manufacturer. The other thirty-five percent of the technicians' work involves engine repairs and/or replacement of parts because of particular problems with new vehicles. Generally, parts are replaced in their entirety rather than repairs being made because the vehicle is being sold as new. For this reason, the work of the journeymen automotive technicians involves minimal diagnostic and repair work of the type typically performed by journeymen mechanics and instead tends to primarily consist of the same types of repetitive procedures performed on hundreds of cars at a time.

Also located at Compound 2 is a car wash staffed by 12 to 14 IBT general pool/trainee employees who wash cars; drive them during the processing procedure; and remove their wrap guards, which are protective plastic films covering the cars' surfaces. In hiring general pool/trainee workers, the Employer seeks applicants who can drive a stick shift, pass a drug screen, have a good driving record, will show up for work, and who will perform the work assigned. General pool workers are not required to be journeymen or apprentices and they do not provide any tools. They are temporary/seasonal employees who generally work in greater numbers during the fourth quarter of each year.

In another area of Compound 2, another 12 to 15 utility employees write up work orders for the repair of body damage or mechanical problems on cars and modifications as specified in the manifest. They also perform detail work on cars and perform pre-delivery inspections to ensure that the cars are ready for delivery. Utility employees are required to have some technical skills but are not required to have completed a trade school or apprenticeship.

Two IBT locators also work at Compound 2. Their job is to survey the vehicles for damage that may have occurred during transit. The IBT locators also compare the vehicles with the delivery manifest to ensure that the inventory conforms to the paperwork. The IBT locators collect work orders made up by the IBT utility workers and match them with the retail sales labels and place them with the appropriate vehicles. The IBT locators are

generally responsible for handling the administrative paperwork associated with processing a vehicle through the Employer's facility.

Administrative employees and an IT coordinator also work at Compound 2. The IT coordinator is responsible for overseeing the Employer's computer system. The administrative employees interact with customers, handle incoming phone calls, handle billing, input information into the computer and handle other general administrative work. These employees have not been part of the historical bargaining unit and no party contends that they should be included in the unit.

The Integrated Nature of the Employer's Operation. The record reflects that the Employer's workflow process is highly integrated and that such integration is necessary to handle the high volume of new cars that come through the Employer's facility. In this regard, after a car arrives at the Employer's facility, an IBT locator determines if damage has been sustained and what other work needs to be performed on the car. Typically, transit damage to a vehicle is handled first after being identified by an IBT locator, and the car is driven by an IBT general pool/trainee or an IBT utility employee to the body shop for repairs. A utility employee writes up the repair order and either a manager or an IBT lead person schedules such repairs for the body shop. Then the IAM journeyman body, fender and paint technician or journeyman automotive technician reviews the work order ticket, inspects the car, and performs the repair work. After bodywork or engine repairs are made, an IBT general pool/trainee employee or a utility employee moves the car to the next step in the process. If a part needs to be replaced or a mechanical modification made, the vehicle is driven to the automotive repair shop by IBT general pool/trainee employees where the IAM journeymen automotive technicians perform the required work. If the car needs to have accessories added such as roof racks, spoilers, etc., it is taken to the accessories area next to the body shop where IBT utility employees add the accessories. After the repair work has been completed and/or the accessories have been added, the vehicle is taken through the car wash by an IBT general pool/trainee employee and returned to the final inspection area by an IBT utility worker or an IBT lead person. The two IBT lead persons are generally responsible for overseeing the operation and passing along instructions from the facility manager to the work force. No party contends that the IBT lead persons are statutory supervisors and they were covered under the most recent collective-bargaining agreement between the parties.

In the final inspection area, the car is inspected, the owner's manuals and floor mats are added, and a retail price label is affixed by IBT employees. The vehicle is then released to the carrier. At Compound 2, there is also a parts department where two IBT parts employees maintain, track and handle the inventory of parts used by IAM technicians and IBT utility workers to accessorize cars.

Compound 4. Compound 4 is located between one and two miles from Compound 2. It contains a five to six thousand square foot warehouse. The Employer handles both domestic and export vehicles at Compound 4 and basically performs the same services as at Compound 2. The customers are other dealerships or fleet accounts, including GSA, Overseas Sales Corporation, and PG&E. Working at Compound 4 are 12 to 14 general pool workers, two locators, seven or eight utility workers, one underseal/ziebart applicator, one journeyman automotive technician and one journeyman body, fender and paint technician. The one administrative employee working at Compound 4 performs the same type of work as the administrative employees at Compound 2.

The IAM and IBT employees working at Compound 4 report to Facility Supervisor Les Phillips. There is no parts department at Compound 4. Rather, parts used at this facility are ordered through Compound 2. Both automotive technicians working at Compound 4 provide their own tools, while other employees, including the IBT underseal/ziebart applicator, do not. The underseal/ziebart applicator puts cars on a rack and sprays a protective undercoat on them, using spray pumps and spray guns provided by the Employer. The Employer provides a uniform to this employee as it does to the IAM journeymen technicians.

In addition to the compounds described above, the Employer has a location on Elm Street where its management, administrative and accounting offices are located.

Interchange and Contact Between IAM and IBT Employees. The record reflects that while the IBT employees are not capable of performing the technical diagnostic and repair work of the IAM technicians, they have, on occasion, performed less-skilled types of IAM work. IAM employees have also performed IBT work if the Employer is particularly busy. According to IAM Journeyman Painter Newton, about three or four times a year, when his work-load is heavy, an IBT employee assists him by sanding spoilers, a job he described as being "monotonous and repetitive." As described below, there is a section in the Agreement which provides for temporary cross-over work under certain specified conditions, namely that it is not being done while an employee in the unit to whom the work belongs, is laid off. The record reflects that no IBT employee had performed IAM work within the six months prior to the hearing because of the low volume of business with the exception of one occasion when an IBT employee performed the IAM work of sanding a spoiler. The record further reflects that the grievance filed over this incident was resolved in favor of the IAM because the work was performed at a time when an IAM employee was on layoff. Triplett could recall no other instance of IBT employees performing IAM work within the past year. Triplett further testified that about a month before the hearing, Journeyman Automotive Technician Mike Venegas had installed a spoiler, which is typically the work of the IBT utility employees. According to Triplett, within the past two years, the IBT employees had assisted the IAM employees on a PUP, which had lasted a couple of

weeks and involved many cars. In this regard, Journeyman Automotive Technician Nelson testified that in calendar year 2002, he had worked with the IBT employees on a PUP involving five hundred cars, where the IBT employees had prepared the cars under the oversight of the IAM journeymen automotive technicians, and the IAM technicians had replaced the mechanical parts as required by the customer. According to Nelson's testimony, on that occasion, the IAM and IBT employees were working on the same vehicles but mostly at different times.

The record discloses only one instance of a permanent transfer between IAM and IBT classifications within the past ten years. That transfer took place about two years prior to the hearing, when IBT employee Carlos Arroyo transferred to become the IAM body shop helper. The Agreement contains a provision providing for such permanent transfers.

With regard to contacts between IAM and IBT employees, the record reflects that the IAM journeymen spend most of their work time in their respective shops. They do, however, have regular interactions with IBT employees, including with the parts employee who writes up the order for parts; with the IBT lead who at times delivers the schedule to the IAM automotive technicians; and with IBT employees who deliver parts to them. In addition, the IAM installer and the IAM body shop helper both work in the same area side-by-side with the IBT employees and IBT employees sometimes help the IAM journeyman painter in sanding spoilers. As shown above, there are also occasions when employees from the two groups have worked side-by-side on PUP's.

Wages, Benefits and Other Working Conditions. As noted above, all of the employees at issue herein have been covered under a series of successive collective-bargaining agreements for the past 31 years. Under these agreements, they have received the same benefits, including vacations, holidays, and sick leave, health and pension plan. Under the Agreement, the Employer provided the IAM journeymen technicians and apprentices with uniforms. IBT employees, except for the underseal/ziebart applicator, are apparently not provided with uniforms, although the Agreement states that overalls will be provided to employees who are engaged in ratcheting, chaining and tying down vehicles on rail cars. Both IAM and IBT employees are subject to the same Employer rules; clock in at the same time clock, and use the same parking lot, lunchroom, bathrooms and lockers. The Employer holds work meetings and social events jointly with both IAM and IBT employees.

The minimum hourly wages for the IAM classifications under the most recent Agreement are journey/automotive technician, \$23.40; body, fender and paint technician, \$21.80; foreman, \$23.30; body shop helper, \$17.03; and installer, \$17.81. Under the Agreement, apprentices to the journeymen technicians are paid a percentage of the journeymen minimum wage rates and the Agreement provides for an apprenticeship-training fund. There are no contractual provisions for apprenticeships for IBT employees. The Employer also

provides tool insurance for the IAM employees who provide their own tools. Seniority under the Agreement is determined by length of service and separate seniority lists are maintained for each compound. Other provisions in the Agreement relating to the transfer of employees between unions, as described below, indicate that there are separate seniority lists maintained for IAM and IBT employees.

The minimum hourly wages for the IBT classifications under the most recent Agreement are general pool workers, \$8.90; utility workers, \$14.20; locators, \$16.00; account leads, \$16.40; lead persons, \$16.40; parts person, \$16.25; utility parts person, \$14.45; maintenance employee, \$16.35; the underseal/ziebart applicator, \$16.10.

The Agreement contains provisions for the permanent and temporary transfer of employees working within the jurisdiction of one of the unions to a position or work falling under the jurisdiction of the other union. Employees who permanently transfer must become members of the union to which they transfer within 30 days and must be placed at the bottom of that union's seniority list. However, such employees retain their seniority in the unit and classification from which they transferred for a period of three months from the date of transfer. With regard to the provision dealing with temporary transfers, such transfers are allowed provided that no seniority employee in the union having jurisdiction over the work to be performed is on layoff.

History of Collective Bargaining. As indicated above, since 1971, the Employer, the Petitioner and the Teamsters Union, and their predecessors, have been parties to a series of collective-bargaining agreements under which the IBT and IAM employees have been one unit and the two unions have been described as "the Union." The record reflects that this thirty-one year period has been a stable, peaceful period with few disputes and no strikes. During this thirty-one year period, the two unions have had separate shop stewards, except for a brief period in the 1980's, and have each handled their own respective grievances. Prior to the current negotiations, contract negotiations have always been conducted jointly. In the current negotiations, the first meeting was held with the Employer and both unions in August 2003, but since that time, there have been two or three meetings conducted separately between the Employer and each union.

The record reflects that the impetus for the filing of the current petition is the belief of the Petitioner that the IAM employees are not getting "a fair shake," at the bargaining table because the negotiations are being driven by the IBT. However, the record does not contain any specific evidence supporting this assertion. The Employer has apparently agreed to negotiate separately with the Petitioner and, according to the Petitioner, to negotiate an addendum to the new agreement in order to address any separate IAM issues. However, the Employer has not agreed to sign a separate contract with each union. As noted above, the Teamsters Union has sent the Petitioner a letter stating that it is not

interested in representing the Employer's IAM employees separately or in being certified jointly with Petitioner in a collective-bargaining agreement. The Employer has expressed its concern that the carving out of separate units will mark an end to the long, stable period of peaceful collective bargaining that has existed between the parties.

Petitioner's Qualifications. The record establishes that the Petitioner is well qualified to represent journeymen mechanics and that it has apprenticeship and training programs for such employees.

Area Practices In the Industry. General Manager Triplett testified that there have been relatively few port processors in the United States and that Benicia is well located as a port processing location, so there have been a number of port processors operating out of Benicia during the 1970's and 1980's. According to Triplett, a multi-employer association, the Industrial Employer's Distributors Association, negotiated the master agreements for these port processors that contained an overall unit like the one in the instant case, and that such a unit has been the standard practice in the industry for this area. Triplett testified that he was unaware of any port processor in the United States that does not have a joint bargaining unit of the type herein. The record contains no evidence regarding any port processor who has had separate units of IAM and IBT employees.

Analysis. The controlling precedent in this case is *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387 (1966), wherein the Board reconsidered the craft severance policy promulgated in *American Potash & Chemical Corp.*, 107 NLRB 1418 (1954). In *American Potash*, the Board established two basic tests for severance: (1) the employees involved must form a true craft or departmental group; and (2) the petitioning union seeking to carve out a craft or departmental unit must be one which has traditionally represented that craft. *Id.* at 1422. Upon review of *American Potash* in *Mallinckrodt*, the Board concluded that the application of these "mechanistic" tests always led to the result that the interests of the craft employees always won out "without affording a voice in the decision to the other employees, whose unity of association is broken and whose collective strength is weakened by the success of the craft or departmental group, in pressing its own special interests." *Mallinckrodt*, at 396.

The Board further concluded that the policy of directing severance elections simply upon fulfilling the craft status and traditional representative standards failed to "permit satisfactory resolution of the issues posed in severance cases." *Id.* The Board explained that by limiting consideration exclusively to the interests favoring severance while completely overlooking the equally important statutory policy of maintaining the stability of existing bargaining relationships, it was prevented "from discharging its statutory responsibility to make its unit determinations on the basis of

all relevant factors, including those factors which weigh against severance." *Id.* Thus, the Board concluded that all future severance determinations should be made after consideration of all the relevant factors with an aim toward balancing the interest of the Employer and the entire group of employees in maintaining the stability of labor relations and the benefits of an historical plant-wide bargaining unit against the interest of a portion of that group in having the freedom of choice to break away from the historical unit. *Id.* at 392. Each case thus involves a judgment of what would best serve the worker in his/her effort "to bargain collectively with his employer, and what would best serve the interest of the country as a whole." *Id.* (quoting *NLRB v. Pittsburgh Plate Glass Co.*, 270 F.2d 167,173 (4th Cir.1959), cert. denied 361 U.S. 943 (1960)); *Metropolitan Opera Assn.*, 327 NLRB 740, 752 (1999).

The party seeking severance bears a "heavy burden," *Kaiser Foundation Hospitals*, 312 NLRB 933, 935 fn. 15 (1993), as it is very difficult to establish a craft unit under *Mallinckrodt. Vincent M. Ippolito, Inc.*, 313 NLRB 715, 718 (1994), enfd. as modified 54 F.3d 769 (3d Cir. 1995). As the Board explained, it ". . . is reluctant, absent compelling circumstances, to disturb bargaining units established by mutual consent where there has been a long history of continuous bargaining, even in cases where the Board would not have found the unit to be appropriate if presented with the issue ab initio." *Kaiser Foundation Hospitals*, at 936, citations omitted.

The Board in *Mallinckrodt* outlined several areas of inquiry, which must be examined in determining whether a craft severance is warranted. While not exhaustive, the following factors were deemed relevant: whether the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen or a functionally distinct department, working in trades or occupations for which a tradition of separate representation exists; the collective-bargaining history related to those employees, with an emphasis on whether the existing patterns of bargaining result in stable labor relations and whether that stability will be upset by the end of the existing patterns of representation; the extent to which the petitioned-for unit has established and maintained a separate identity during its inclusion in the overall unit, the degree of their participation or lack of participation in the creation and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation; the degree of integration of the Employer's production processes, including the degree to which the operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit; the qualifications of the union seeking severance; and the pattern of collective bargaining in the industry. *Mallinckrodt*, 162 NLRB at 397. The Board also considers whether the group of

employees seeking severance is "similar to groups [it] heretofore has found entitled to severance from an overall unit." *Id.* at 399; *Metropolitan Opera Assn*, 327 NLRB at 752.

In the instant case, I do not find that the petitioned-for employees may be severed from the existing unit under *Mallinckrodt* for the following reasons. First, while the petitioned-for unit appears to be comprised of a traditional unit of journeyman mechanics and body technicians who possess unique skills from those of other employees, and the Petitioner is indisputably well qualified to represent such a unit, the work of these particular technicians is different from that of most mechanics and body shop employees. Thus, while their work unquestionably requires a skilled technician, much of it is repetitive and routine. Thus, the work of the Employer's journeymen automotive technicians often consists of the replacement of the same parts on many vehicles at the same time, according to detailed instructions provided by the manufacturer or customer, rather than the daily diagnostic and repair type work performed by most auto mechanics in repair shops. With regard to the Employer's journeymen body technicians, their work generally involves repeatedly repairing the same type of damage typically sustained during transit, rather than working on the varying types of damage sustained in car accidents.

I also note that most of the other factors relevant in *Mallinckrodt* do not support severance in this case. In this regard, the record establishes that the Employer's operation is highly integrated and the work of the petitioned-for employees is part of that integrated operation. The petitioned-for employees rely on, and with regard to the body shop helper and the installer, work side-by-side with, the IBT employees. The journeymen IAM employees could not perform their jobs without the general pool employees driving the cars; the locators determining which cars need to be worked on; the utility employees writing up the work orders for the IAM journeymen technicians and providing the spoilers for the journeyman painter to paint; the IBT leads bringing the IAM journeymen technicians their schedules; and the IBT parts employees providing them with parts. All of these groups work together as a cohesive unit to process the thousands of new cars that pass through the Employer's facility each year.

In addition, the IAM and IBT employees have been represented as a single unit for 31 years and they have shared common benefits and other common terms and conditions of employment under several successive contracts, including the ability to transfer into each other's classifications. This cohesiveness is also demonstrated by the common working conditions of the IBT and IAM employees, who have common supervision; common work rules; attend the same meetings and social

events; punch the same time clock; and use the same parking lot, lunchroom; bathrooms and lockers.

Moreover, the lengthy bargaining history revealed in the record presents an exemplar of industrial harmony and stability and the Petitioner has presented no evidence to show that it has been prejudiced by having the IAM classifications part of an overall unit. In this regard, while the Petitioner may assert that it has not received a “fair shake” in bargaining in an overall unit, the Petitioner carries the burden of showing that this is so and it has presented no evidence to support this assertion. In this regard, the record reflects that Employer has apparently agreed to accommodate the Petitioner by bargaining with the Petitioner and the Teamsters Union separately and by agreeing to negotiate an addendum to the new contract to address Petitioner’s unique issues. The record shows that there have been very few grievances filed and in the most recent instance wherein an IBT employee was alleged to have performed IAM work, the Employer settled the grievance to the satisfaction of the Petitioner. Thus, the record is devoid of any concrete evidence to support the Petitioner’s assertion that it has not received a fair shake from the Employer. The record also supports that the overall unit that has existed in this case is of a type prevalent in the port processing business.

In sum, the only factors favoring severance in this case are the higher skills of the petitioned-for employees and the fact that temporary and permanent transfers of employees between IBT and IAM classifications have been infrequent. However, I do not find that these factors are sufficient to warrant severance in light of the other factors discussed above that weigh against it. Nor do I find that the fact that the Teamsters Union has indicated it is not interested in representing the IAM classifications separately or being jointly certified in an overall unit sufficient to warrant a different result in this case, as this assertion does not amount to an express disclaimer of interest in representing an overall unit if the severance petition herein is dismissed, which I have concluded is warranted. In sum, after applying the relevant *Mallinckrodt* factors to all of the evidence presented, I have concluded that the petitioned-for unit is not an appropriate unit for collective bargaining purposes. Accordingly, the petition filed herein is being dismissed.

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